Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

GABRIEL TORRES, NONI ONOSSIAN, CYRIL ONOSSIAN, and HERVE ONOSSIAN,

Petitioners,

v.

H. BONILLA, S. M. SHENIAN, SHERMAN BLOCK, COUNTY OF LOS ANGELES, DANIEL FINN, and BRUCE THOMAS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NONI ONOSSIAN, CYRIL ONOSSIAN and HERVE ONOSSIAN, Plaintiffs, vs. SHERMAN BLOCK, et al., Defendants.	CASE NO. CV92-4816-RMT (EEx) ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Filed Jul. 15, 1997)

This matter having come before the court on the motion by defendants SHERMAN BLOCK, et al., for summary judgment and the court having considered the pleadings and other documents filed herein, and issued its memorandum concurrently herewith,

IT IS HEREBY ORDERED that defendants' motion for summary judgment is GRANTED.

Dated: 7/9/97

/s/ Robert M. Takasugi
United States
District Judge

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GABRIEL TORRES, Plaintiff, vs. H. BONILLA and S.M. SHENIAN, Defendants.	CASE NO. CV94-6667-RMT ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Filed Jul. 8, 1997)

This matter having come before the court on the motion by defendants H. BONILLA and S.M. SHENIAN for summary judgment, and the court having considered the pleadings and other documents filed herein, and determined that genuine issues of material fact exist,

IT IS HEREBY ORDERED that defendants' motion for summary judgment is DENIED.

Furthermore, this court has specifically determined that genuine issues of material fact exist with respect to whether defendants' conduct constituted "deliberate indifference" to Plaintiff's constitutional rights and relatedly, whether a reasonable officer in defendants' position would have concluded that such conduct was lawful. Accordingly, pursuant to *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992), this court certifies that any interlocutory appeal regarding the issue of qualified immunity is frivolous. Based on this certification, this

court concludes that it retains jurisdiction of this action to proceed with trial, presently set for July 22, 1997.

Dated: 7/8/97

/s/ Robert M. Takasugi
Robert M. Takasugi
United States
District Judge

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NONI ONOSSIAN, CYRIL ONOSSIAN and HERVE ONOSSIAN, Plaintiffs, vs. SHERMAN BLOCK, et al., Defendants.	CASE NO. CV92-4816-RMT (EEx) MEMORANDUM (Filed Jul. 10, 1997)

INTRODUCTION

This civil rights action arises out of a vehicle pursuit involving Los Angeles Sheriff's Department officers, Daniel Finn ("Finn"), Larry Yates ("Yates"), and Bruce Thomas ("Thomas") (collectively "defendant officers") in which plaintiffs, Noni Onossian, Cyril Onossian, and Herve Onossian (collectively "plaintiffs") were injured as a result of colliding with the pursued driver's vehicle. Plaintiffs subsequently brought the present action against Finn, Yates, Thomas, Sheriff Sherman Block ("Block"), the County of Los Angeles ("County"), and individual members of the Los Angeles County Board of Supervisors (collectively "Board Members"), alleging a violation of civil rights pursuant to 42 U.S.C. Section 1983.

Defendants have now brought the present motion for summary judgment alleging that (1) defendants did not violate plaintiff's Fourteenth Amendment rights, (2) defendants are entitled to qualified immunity, and (3) defendants are entitled to absolute legislative immunity.

FACTUAL SUMMARY

On August 17, 1991, at approximately 7:15 p.m., defendants Finn and Yates were in their patrol vehicle driving eastbound on Santa Monica Boulevard when they saw a yellow Oldsmobile with a black hardtop ("Oldsmobile") traveling at approximately 60 mph westbound on Santa Monica boulevard. Finn made a U-turn at which time the Oldsmobile was approximately half a block ahead of him. According to Finn, the Oldsmobile was "darting in and out of traffic." Finn followed the Oldsmobile and observed it making an illegal right turn from the number one lane on Santa Monica Boulevard to northbound on Larabee Street. When Finn turned right onto Larabee, he lost sight of the Oldsmobile as it turned left onto Cynthia Street. when Finn turned onto Cynthia Street, the Oldsmobile had already made a left turn onto San Vicente Boulevard. The Oldsmobile subsequently made another illegal right hand turn from the number one lane onto Santa Monica Boulevard.

At this point, Finn, believing that the driver was driving recklessly, and thus, presented a danger to the public, turned on the lights and siren in his vehicle in an attempt to effectuate a traffic stop. The Oldsmobile, however, did not stop, and made an illegal left hand turn against a red light onto Almont Drive. The Oldsmobile then made a left hand turn onto Melrose Avenue and was now traveling at approximately 60-70 mph. Because Finn was traveling at approximately 40-45 mph, and because there was traffic, Finn lost sight of the Oldsmobile after it went through a red light at the intersection of Melrose Avenue and Robertson Boulevard.

Defendant Thomas, who was monitoring the pursuit over the radio, was driving southbound on San Vicente Boulevard when he saw the Oldsmobile run the red light on Melrose Avenue at approximately 60-70 mph. He turned on the lights and siren in his vehicle and began to follow the Oldsmobile on Melrose Avenue. Within 3-4 seconds, Thomas saw that the Oldsmobile had become involved in an accident on Melrose Avenue between Huntley and Westbourne Drive.

Plaintiffs were traveling westbound on Melrose Avenue when the Oldsmobile crossed over the center line onto the wrong lane of traffic and collided with their vehicle. Plaintiffs suffered serious and permanent injuries as a result of the accident.

The entire pursuit lasted approximately 60 seconds and covered approximately 9 blocks. At no time during the pursuit did Finn's vehicle exceed 45 mph; and at the time of the collision, Finn and Yates were approximately 9 blocks away from the accident. At no time during the pursuit did Thomas' vehicle exceed 45 mph; and at no time after turning onto Melrose Avenue was his vehicle less than approximately 100 yards from the Oldsmobile.

The driver of the Oldsmobile, Scott Reed, was subsequently convicted of reckless driving causing great bodily injury in violation of California Vehicle Code Section 23104(b) and was sentenced to two years in prison.

RELEVANT LAW

Summary judgment is only appropriate where the moving party demonstrates that there are no genuine

issues of material fact and that she is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). Once such a showing is made, an opposing party must set forth admissible evidence showing that there is a genuine issue for trial. Fed.R.Civ.P. 56(e). The mere existence of a scintilla of evidence will be insufficient; there must be evidence on which a jury could reasonably find for the opposing party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

DISCUSSION

In order to establish a violation of 42 U.S.C. Section 1983, a plaintiff must prove that (1) the conduct complained of was committed by a person acting under color of state law and (2) that [such] conduct deprived the plaintiff of a federal constitutional or statutory right. *Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989), *cert. denied*, 498 U.S. 938 (1990). In the present case, it is undisputed that defendant officers, as law enforcement officials, were acting under color of state law. Thus, the sole question is whether defendant officers deprived plaintiffs of a federal constitutional or statutory right.

Plaintiffs claim that defendant officers violated their Fourteenth Amendment right to substantive due process by recklessly engaging in a high speed pursuit. In *Lewis v. Sacramento County*, 98 F.3d 434 (9th Cir. 1995), the Ninth Circuit addressed this issue and concluded that liability will attach where a defendant's actions exhibit a "deliberate indifference to, or reckless disregard for, a person's right to life and personal security." 98 F.3d at 441. In *Lewis*, the defendant officer conducted a high speed chase involving teenage motorcyclists whose sole offense was

refusing to stop when directed by the officer to do so. Phillip Lewis, one of the motorcyclists was killed when the officer's vehicle collided with him; his parents subsequently brought suit pursuant to 42 U.S.C. Section 1983. The pursuit involved a nighttime chase in a residential area in which the defendant officer followed the motorcyclists at distances as close as 100 to 150 feet, and in which the speed of the officer's vehicle reached approximately 100 mph. The pursuit lasted approximately 75 seconds, covered approximately 1.3 miles, and went through four stop lights and three ninety-degree left turns. Based upon these facts, the Ninth Circuit found that a genuine issue of material fact existed as to whether the defendant officer acted with deliberate indifference to or in reckless disregard of plaintiffs' substantive due process rights, and thus, reversed the district court's granting of defendant's motion for summary judgment.

The facts of the present case are significantly different. In the present case, it is undisputed that the driver of the Oldsmobile was speeding at approximately 60 mph on surface streets, darting in and out of traffic, and making illegal turns prior to the initiation of the pursuit. Thus, the Oldsmobile already presented a threat to public safety, while in *Lewis*, the officer "only 'needed' to apprehend the [motorcyclists] because they refused to stop." 98 F.3d at 442. In addition, while the speed of the officers in the present case never exceeded 45 mph in an urban area and the distance between the vehicles was never less than 100 yards, in *Lewis*, the officer's vehicle exceeded 100 mph in a residential area and followed at a distance of as little as 100 feet. Furthermore, once the pursuit had begun, there was a clear danger involved in the present

case with terminating the pursuit because the driver of the Oldsmobile was continuing to drive recklessly, while in *Lewis*, the court specifically noted that there was "no apparent danger involved in permitting the [motorcyclists] to escape." 98 F.3d at 442. Thus, in contrast to *Lewis*, the present action is not a case where the facts, construed in the light most favorable to the plaintiffs, could support a jury finding of deliberate indifference to or reckless disregard for plaintiffs' constitutional rights. Rather, the present case involves defendant officers' reasonable decision to pursue a reckless driver in a manner which did not present an unjustified risk of harm. This simply does not rise to the level of misconduct necessary to maintain a claim of "deliberate indifference" or "reckless disregard," rather, this is precisely the type of discretion which law enforcement officials must be accorded in the realm of public safety. Thus, defendant officers are entitled to summary judgment.

In the absence of an underlying constitutional violation, plaintiffs cannot maintain their claims against Block, the County and the Board Members for being legally responsible for defendant officers' conduct. *City of Los Angeles v. Heller*, 475 U.S. 796 (1986). Thus, Block, the County, and the Board Members are also entitled to summary judgment.

Dated: 7/9/97

/s/ Robert M. Takasugi
Robert M. Takasugi
United States
District Judge